

Service Date: March 21, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
OF Montana Rail Link, Inc. to)	
discontinue its agency operations)	DOCKET NO. T-9454
at Belgrade/Bozeman, Montana)	ORDER NO. 5985

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, 201 West Main, Missoula, Montana 59802

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner

BACKGROUND

Montana Rail Link (MRL or Applicant) applied to the Montana Public Service Commission (Commission) on August 14, 1989 for authority to close its dualized agency operations at Belgrade and Bozeman, Montana (Belgrade/Bozeman). Applicant stated that the agency facility was located in a building owned by another party.

On October 20, 1989 the Applicant amended the petition to update exhibits through 1988 and to request an order disposing of the agency facility at Belgrade. Applicant stated that the agency in Bozeman was located in a building owned by another party.

The Commission noticed MRL's application and held a public hearing on November 29, 1989 in the Council Room of the City Hall, 88 North Broadway, Belgrade, Montana.

Applicant stipulated to a final order at the conclusion of the hearing.

SUMMARY OF TESTIMONY

Testimony of Applicant

Orson E. Murray, John L. Grewell, Richard L. Keller, Dan Sokolowski and Perry T.

Smith testified for MRL.

Orson E. Murray, Director of Operation Informations Systems for MRL, sponsored and testified on Exhibits A, B, C and D, statistics for the Belgrade/Bozeman agency from 1986 through September, 1989. The agency functions are handled by the central office in Missoula where everything is on the computer. The central office traces cars, receives bills of lading, takes car orders, gives instructions on spotting cars, etc. Instead of calling the agent, all shippers have MRL's toll-free number in Missoula. MRL vigorously pursues new business and is committed to providing service, according to testimony.

Mr. Murray testified that the present agent had been at Belgrade two months. She was hired from a temporary employment agency and was not an MRL employee. She acted only as an intermediate to the people doing the work in Missoula. Mr. Murray testified that the present agents have had no duties related to safety since the hot box detectors were placed into service.

Exhibits A through D, sponsored by Mr. Murray, establish that Belgrade forwarded 1,898 cars in 1986 and received 152 for a total of 2,050 cars, while at Bozeman 167 were forwarded

and 50 received for a total of 217 cars. In 1987, 2,318 were forwarded and 272 received, for a total of 2,590 cars at the Belgrade agency; 123 were forwarded and 33 received for a total of 156 cars at the Bozeman agency. In 1988, 2,246 cars were forwarded and 160 received for a total of 1,542 cars at Belgrade; in Bozeman, 320 were forwarded and 29 received for a total of 349 cars. Finally, from January to September, 1989, 1,385 cars were forwarded from and 94 received at Belgrade, for a total of 1,479 cars; 144 were forwarded from and 30 received at Bozeman, for a total of 174 cars. The agencies were profitable, Mr. Murray testified.

John L. Grewell, MRL's Superintendent of train crews located at Laurel, Montana, testified on the issue of safety. Approximately every 20-30 minutes trains pass over hot box detectors which are devices to detect hot ball bearings. There are also steel plates between the rails to detect dragging equipment. Typically, train crews inspect and/or do roll-by inspections three to four times in 200 miles. Laurel, Montana is a federally mandated 1,000 mile inspection point. Everything on board the inbound train is thoroughly inspected at Laurel, then again on the outbound trains. The agent at Belgrade/Bozeman has no training and no duties related to inspection, safety or hazardous materials. Besides, the agent works only 40 hours per week, while the crew inspections go on around the clock. Mr. Grewell testified that crews are required to carry information on hazardous materials to make available to first responders on the scene, e.g. the fire department. The agent is unable to do anything about hazardous materials.

Richard L. Keller, MRL's chief engineering officer in Missoula in charge of track functions, bridge and building, testified that any time a train passes a section crew or other MRL employees, both sides of the train are inspected. A section crew is stationed at Belgrade. Detectors are located along the tracks every 25-30 miles to sense excess heat as the axles pass over and report to the engineers. At the slow speeds required in mountainous territory, however, there are few hot boxes. Mr. Keller testified that the agent serves no safety function. There are 18 hot box detectors now. MRL also installed dragging equipment detectors.

Dan Sokolowski, MRL's general mechanical foreman in charge of the train yard, shop and locomotives, handles the 1,000 mile inspections at Laurel. These are more than roll-by inspections. The railroad keeps records of the 1,000 mile inspection as required by federal law. The station agent can add nothing to the inspection, he testified.

Perry T. Smith, MRL locomotive engineer from Missoula, Montana, testified that the engineers and crews do visual inspections of all the trains they pass daily. The engineer informs the trains passing whether their end of train devices are working. He personally inspects his own train. The hot box and dragging equipment detectors communicate with the engineer by electronic voice box. He testified that an agent could add nothing to safety.

Testimony of Public Witnesses

No shippers appeared to testify. No residents of Belgrade/Bozeman or environs appeared to testify as to shipping problems or as to any concerns about safety.

James T. Mular, State Legislative Director for the Transportation and Communications International Union, resides in Butte, Montana. He testified in opposition to closure of the Belgrade/Bozeman agency. Mr. Mular's testimony and statement concerned MRL's meeting the agency staffing requirement by hiring a temporary employee to staff the agency and not training the employee or giving her appropriate agency duties to perform. While the present arrangement may satisfy the four to five major shippers in Belgrade, Mr. Mular questioned what MRL would do for expansion of business. He questioned whether a travelling trainmaster is able to handle problems from Livingston to Missoula.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

The Commission finds that the agency at Belgrade/Bozeman is profitable and that no shippers or receivers of freight appeared in opposition to the application. Likewise, no members of the general public affected by the presence of the agency in their community appeared to testify.

Before the legislature amended § 69-14-202(2), MCA in 1989, in order to close an agency facility located in a community on or before January 1, 1987, the railroad had to demonstrate to the Commission that the facility was no longer required for the public convenience and necessity of the shipping public. The 1989 legislature modified § 69-14-202(2), MCA, adding this language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

The Commission reads this amendment to § 69-14-202, MCA, to reflect the intention of the legislature to expand Commission analysis to include impacts of the proposed closure upon the general public as well as shippers. A review of the legislative history of this amendment supports such an interpretation.

Based upon the absence of shipper testimony and on MRL's evidence that its centralized office in Missoula is willing and able to provide, and has provided, all necessary services, the Commission finds that the convenience and necessity of the shipping public does not require the Belgrade/Bozeman agency to remain open. The Commission further finds that the union representative's testimony did not support an inference that the general public would be burdened by the closure of this agency. The union representative's testimony concerned the defacto closure and MRL's hiring a temporary agent to staff the agency without training and without duties to perform. Any safety concerns were unspecified and undocumented.

The manner in which an agency is staffed is a management decision that will vary with the needs of a particular locality. The Commission has never defined specifically what the staffing of an agency requires and will not do so now. However, § 69-14-202(1), MCA, requires that the railroad staff agencies the Commission has not authorized to close as they were staffed on or before January 1, 1987. If the railroad demonstrates that the agency facility is not needed pursuant to § 69-14-202(2), MCA, then the Commission may authorize the closure. MRL has made the requisite showing that staffing of the agency at Belgrade/Bozeman is not required for the public convenience and necessity either of the shipping or the general public. MRL's demonstration was not refuted by either the shipping or the general public directly or indirectly affected by the proposed closure.

The Commission further finds that MRL has met any burden imposed by the 1989 legislature to demonstrate that the agency is not required to meet safety or other concerns of the general public. This demonstration was unrefuted by public testimony.

No specific rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953) cert. den. 346 U.S. 823. The Commission concludes that in this case MRL has established that public convenience and necessity do not require the continuance of an agency at Belgrade/Bozeman, Montana.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA. The petition to close the Belgrade/Bozeman agency is made pursuant to 69-14-202, MCA (1989).
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.
3. Public convenience and necessity do not require the continuance of an agency at Belgrade/Bozeman, Montana.
4. The Commission concludes that Montana Rail Link may dispose of the agency facility at Belgrade. Prior to its disposal, MRL should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs Montana Rail Link to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Montana Rail Link's application in Docket No. T-9454 to close the agency at Belgrade/Bozeman, Montana, and dispose of the agency facility is Granted.

IT IS FURTHER ORDERED that Montana Rail Link shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

Done and Dated this 21 st day of March, 1990 by a vote of 5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.